

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.502 OF 2016

Francis Henry D'souza .. Applicant

Versus

The State of Maharashtra .. Respondent

Ms.Tripti R. Shetty, Advocate for the applicant.

Mr.H.J.Dedhia, APP for the Respondent State.

CORAM : P.N. DESHMUKH, J.

DATED : 21st JUNE 2016

P.C. :

1 Accused No.4-Francis Henry D'souza involved in Crime No.242 of 2014 registered on 21/12/2014 for the offences punishable under Section 302, 201, 342, 120(b), 170 of the Indian Penal Code by the Dongari Police Station has sought bail.

2 The learned counsel for the applicant submitted that incident took place on 20/08/2014 when missing complaint was lodged by brother of deceased Vaibhav and thereafter on inquiring the same present offence came to be registered, as aforesaid, on the basis of report lodged by Girija Mhaske, PSI and by inviting attention to the contents of report had contended that there is nothing to establish involvement of applicant as assailant of Vaibhav.

3 My attention is further invited to the order passed by this Court while granting bail to co-accused Michael Mozes and the observations therein with reference to statement of Milind Padval, who according to the prosecution is the only witness establishing involvement of applicant Francis Henry D'souza in this Crime. It is submitted that statement of said Milind is recorded on 27/01/2015 i.e. more than one month after the arrest of applicant on 31/12/2014 and from the date of arrest of accused Prakash Patil on 21/12/2014.

4 The learned Additional Public Prosecutor while objecting the application had pointed out that from the statement of Milind Padval presence of applicant is established where deceased was brought before he went missing, and subsequently his dead body was found on 22/08/2014.

5 I have perused the documents filed with the application. It reveals that Vishal Achrekar – brother of deceased on 23/08/2014 had lodged missing report with Dongari Police Station contending that deceased was not found since 20/08/2014. During the course of inquiry in this report, it revealed that Vaibhav was in relation with one Jostna More and call details from her cell number to cell number of Vaibhav were obtained and the CDR were studied, from which it revealed that on 19/08/2014 from 7.00 p.m. to 9.44 p.m. Vaibhav was within Dahisar area. On interrogating Jostna More, she agreed about her physical relation with deceased Vaibhav and on further interrogation with regards to cell number, which was found

oftenly used by her, was found to be of accused No.1-Prakash Patil. On apprehending Prakash Patil, he came to be interrogated, and stated having his physical relations with Jostna and further stated that Vaibhav was causing trouble to Jostna demanding physical relations to be continued with him and Jostna has, therefore, informed Prakash Patil to do something to get rid of Vaibhav and accordingly on 20/08/2014 Jostna called Vaibhav at Dahisar and thereafter, at Naigaon near Club House, where he reached around at 10.30 a.m. On the basis of physical description of Vaibhav given by Jostna to co-accused Prakash Patil and Michael Mozes, they apprehended Vaibhav on the false pretext by introducing themselves as police officers and took him to the office of Michael and manhandled him by fist blows and kick blows saying that he is bothering Jostna. Both the co-accused continued their assault till the evening and at about 10.00 p.m. caused his death by strangulation by rope and thereafter on wrapping his body in a bed-sheet carried it in the vehicle of Michael to Manor on Bombay-Ahmedabad Highway, wherefrom it was thrown down the bridge into the flowing river.

6 In the background of contents of report, as aforesaid, it is material to note that no name of applicant is mentioned in the FIR. The case of prosecution has duly been considered by this Court, while deciding Bail Application of co-accused Michael Mozes, whose role from the contents of FIR appears to be much more than the role attributed to the applicant. From the statement of Milind Padval, it only reveals that applicant was present at the office of co-accused, and stated that on 20/08/2014 when he contacted applicant for receiving his payment, applicant called him

at Naigaon and took him to the office of Michael Mozes, where one person was present along with the applicant to whom co-accused Prakash Patil and Michael Mozes took inside the office, whose name was disclosed by applicant as Vaibhav Achrekar stating that he was harassing sister of Prakash Patil.

7 This Court while considering the bail of co-accused have already considered the theory of last seen together, as has been put forth by the prosecution, and had also considered fact of FIR being registered on 21/12/2014, on carrying out detail inquiry in missing complaint, wherefrom it *prima facie* appears that co-accused Jostna and Prakash Patil disclosed the fact to the police during the course of investigation, as aforesaid, while statement of Milind Padval came to be recorded belatedly on 27/01/2015; which thus rises serious doubt as to truthfulness of the contents of statement of Milind, who along with co-accused has involved the applicant. Admittedly, co-accused Michael Mozes is enlarged on bail by this court.

8 Having considering the fact that the charge sheet is filed and co-accused is released on bail and even otherwise on considering the nature of allegations against the applicant, the application is liable to be allowed as per order below :

(i) Applicant - Francis Henry D'souza shall be released on bail on his executing personal bond in the sum of Rs.50,000/- with one surety in like amount.

(ii) On being released on bail, applicant shall mark his

presence in Dongari Police Station on 1st and 15th day of each month between 10.00 a.m. to 12.00 noon.

- (iii) Applicant shall attend the trial Court on each day fixed for the hearing and shall not tamper with evidence or the prosecution witnesses.

(P.N. DESHMUKH, J)